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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,276	07/08/2003	Kristian DiMatteo	01194-458001 / 03-282	8211

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EXAMINER	
EBRAHIM, NABILA G	

ART UNIT	PAPER NUMBER
1618	

NOTIFICATION DATE	DELIVERY MODE
11/19/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/615,276	**Applicant(s)** DIMATTEO ET AL.	
	Examiner Nabila G. Ebrahim	**Art Unit** 1618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *07 November 2008*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See below..
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

/Nabila G Ebrahim/
Examiner, Art Unit 1618

Applicant is arguing the final office action and the advisory action alleging that modifications of the Smith reference based on mere conclusory statement form Gray. To respond, Smith teaches that asymmetric microporous beads are provided that can be prepared prior to loading them with active ingredient, that can contain up to 90% active ingredient, that are exceptionally durable and sprayable, and that can release essentially all of the active ingredient at a constant rate over long periods of time (col. 2, lines 18+). Thus, it is expected that people of ordinary skill would be motivated to sue such porous distribution to benefit from the high release rate in long preiods of time. Applicant argues that gray does not describe how such crosslinked polymer matrices are made. to respond, nether do instant claims recite the argued method. Instant clam only recite " spherical polymer particle comprising a cross-linked polymer matrix", no guidance of how this matrix is made. Applicant argues that the advisory action asserts that modification of Smith to obtain the claimed paricle composition and methods would be within the skill of one of ordinary skill in the art, without articulating any basis in the prior art for such a modification. Tor respond, see statement for motivation supra. Applilcant argues that Smith reciting a pore structure without crosslinking. To respond, Gray discloses the crosslinking. Applicant alleges that Kaminski is unrelated to the formation or use of porous beads or particles. To respond, Kaminski was relied upon for teaching an antibody bound to the isotope. Applicant argues that Smith's porous beads are fromed by precipitation methods that require very particular combinations of sovents and polymers and that Smith contains numerous restrictions on the polymers, sovents and nonsolvent liquid combinations that may be used to form microbeads. To respond, Applicant's allegations were not found persuasive because instant claims do not recite any steps for making the porous beads that could be compared to Smith, thus Smith reads on the instant claims regardless of the methods, the beads were made. Applicant argues that combining Kaminski would not enable a cross linked polymr matrix and regions of different predominant pore sizes. To respond, enablement is required if the method is novel and not known in the art, however, Gray enabled his preferred embodiments (see page 6 lines 11+). Further, a crosslinked polymr matrix is not novel and people of ordinary skill would be able to make or at least it would be obvious to try to make it without undue experimenation. Applicant argues that Ajay is completely silent on both pore structure and crosslinking. To respnd, the pore structure is disclosed by Smith and the crosslinking is preferred by Gray. Applicant argues that Smith's porous beads may reduce the coefficient of friction of the outside surface of the bead. To respond, applicant has the burden to provide why he thinks that the combination of Smith and Gray would result in reducing the coefficiency of friction. Further, instant claims do not exclude lower coefficient of friction. Applicant argues that the colloid particles disclosed in Atcher are not formed from a polymer and are not porous. Instead, Atcher provides a radioactive ferric hydroxide colloid with a radionuclide. To respond, Atcher was relied upon for disclosing particles wherein the agent is attached to the surface of the particle.